

1 UNITED STATES DISTRICT COURT  
2 WESTERN DISTRICT OF NEW YORK  
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6 UNITED STATES OF AMERICA

11-CR-6051(G)

7 vs.

8 WILLIAM H. SCHLIEBENER, JR.,  
Defendant.

Rochester, New York  
November 18, 2014  
4:02 p.m.

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10  
11 TRANSCRIPT OF PROCEEDINGS  
BEFORE THE HONORABLE FRANK P. GERACI, JR.  
12 UNITED STATES DISTRICT JUDGE  
13

14 WILLIAM J. HOCHUL, JR., ESQ.  
United States Attorney  
15 BY: JOHN J. FIELD, ESQ.  
Assistant United States Attorney  
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Rochester, New York 14614  
17

18 MARIANNE MARIANO, ESQ.  
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19 BY: JEFFREY CICCONE, ESQ.  
Assistant Federal Public Defender  
20 28 East Main Street, Suite 400  
Rochester, New York 14614  
21 Appearing on behalf of the Defendant

22 ALSO PRESENT: David Spogen, U.S. Probation Office

23  
24 COURT REPORTER: Christi A. Macri, FAPR, RMR, CRR, CRI  
Kenneth B. Keating Federal Building  
100 State Street, Room 2120  
25 Rochester, New York 14614

P R O C E E D I N G S

\* \* \*

(WHEREUPON, the defendant is present).

**THE COURT:** Are you William Schliebener?

**THE DEFENDANT:** Yes, sir.

**THE COURT:** Mr. Ciccone appears on behalf of  
Mr. Schliebener.

Mr. Field on behalf of the Government.

**MR. FIELD:** Good afternoon, Your Honor.

**THE COURT:** Matter's on for sentencing. The Court  
has had the presentence report, which I've reviewed.

I also have a statement from the Government  
regarding sentencing factors, which I've also reviewed.

In addition, I have a statement or objections to  
the presentence report and defendant's sentencing statement  
filed by Mr. Ciccone.

And subsequent to that he also filed another  
document dated November 10th regarding the lab reports from  
North Carolina.

Two major issues that I see. One is an issue that  
was reserved as part of the plea agreement in that the defense  
alleges that there's not sufficient proof to show that  
Mr. Schliebener had sexual contact. Consequently, the  
assessment of points for sexual contact should not be  
assessed.

1 And, secondly, and probably just as critical, is  
2 the calculations of the guidelines. The plea agreement by  
3 the Government and the defense utilized multiple guideline  
4 manuals in the calculations of the guidelines pursuant to the  
04:18:36PM 5 plea agreement.

6 The Probation Department utilized the 2013  
7 guideline to determine the potential sentence under the  
8 guidelines and, Mr. Ciccone, it's my understanding you feel  
9 that that's improper.

04:18:54PM 10 Did you want to articulate that any further?

11 **MR. CICCONE:** Judge, for the most part I outlined my  
12 arguments in our submissions, but essentially the point is  
13 that it is a violation of Mr. Schliebener's rights under the  
14 *ex post facto* clause in that the PSR is applying an  
04:19:13PM 15 enhancement to Counts 2, 3 and 4, it's the same enhancement,  
16 but it's an enhancement that did not exist at the time that  
17 the crime was committed.

18 Based on that, it's a violation of his  
19 constitutional rights and I would argue that it should not be  
04:19:29PM 20 applied under -- the older guideline manual should be used as  
21 to Counts 2, 3 and 4.

22 **THE COURT:** Okay. And how do you differentiate the  
23 ruling in *Kumar*, K-U-M-A-R?

24 **MR. CICCONE:** Sure. Essentially two different  
04:19:41PM 25 arguments, Judge. One is there's actually a split of

1 authority among the different circuits, I mean, I realize  
2 we're within the Second Circuit, but not all courts have found  
3 that the so-called "one book rule," which is what *Kumar* relies  
4 on is appropriate and not a violation of the *ex post facto*  
04:19:57PM 5 clause. So my argument would be that the other circuits are  
6 the ones that got it right, it is a violation of  
7 *ex post facto*.

8 But even if Your Honor were inclined or felt  
9 compelled to follow the Second Circuit authority, I would  
04:20:10PM 10 argue that this case is different from *Kumar* in that we're not  
11 dealing with the issue of notice, which is what was so  
12 important in *Kumar*.

13 Second Circuit said that in that case the  
14 defendants were on notice that the older crime was going to be  
04:20:25PM 15 subjected to a harsher penalty because this one book rule had  
16 been passed in-between the defendant's older crime and the  
17 newer crime, so when they committed that newer crime, they  
18 were on notice of the harsher penalties.

19 That's not the case here because the older crime  
04:20:43PM 20 was committed in North Carolina. The newer crime here in New  
21 York State, there is no venue for the older crimes here.

22 So it could not be that Mr. Schliebener knew if I  
23 commit this newer crime in the Western District of New York,  
24 I'm going to be subjected to harsher penalties based on the  
04:21:02PM 25 older crimes down in North Carolina. Because they just

1 couldn't have been brought here but for the venue waiver,  
2 which was done as part of the plea agreement, and that plea  
3 agreement was the agreement that used the older guidelines.

4 **THE COURT:** Mr. Field, do you want to be heard on  
04:21:17PM 5 that?

6 **MR. FIELD:** Not particularly, Your Honor. The  
7 *Lawlor* case, I mean, the Government has agreed the guidelines  
8 range that it agreed to in the plea agreement. We're not  
9 advocating that a higher or different guideline should apply.

04:21:30PM 10 I would note, however, that in the plea agreement  
11 in terms of notice to the defendant, it did put him on notice  
12 that the maximum penalty was up to life imprisonment, I  
13 believe, or in the -- not the plea agreement, or was there a  
14 plea agreement?

04:21:46PM 15 **MR. CICCONE:** There was a plea agreement.

16 **MR. FIELD:** That put him on notice of that as being  
17 the potential maximum penalty that might apply in this case.

18 **MR. CICCONE:** And, Judge, I'm not arguing that to  
19 the contrary of the notice of the maximum penalties.

04:22:00PM 20 Obviously, every plea agreement says that the defendant is  
21 subject to the maximum penalties under the law.

22 However, the plea agreement did not waive  
23 Mr. Schliebener's rights under *ex post facto* and that's  
24 essentially my argument.

04:22:13PM 25 **THE COURT:** Okay, thank you.

1 Pursuant to *United States vs. Kumar*, K-U-M-A-R, 617  
2 F.3d 612, 2010 Second Circuit decision, the Second Circuit  
3 ruled that the one book rule does not violate the  
4 *ex post facto* clause, specifically utilizing a sentencing  
04:22:37PM 5 manual to apply to a series of charges as in this case, it is  
6 not a violation of *ex post facto* law.

7 It indicates that when sentencing of offenses  
8 committed both before and after the publication of a revised  
9 version of the guidelines, that is not a violation and  
04:22:58PM 10 pursuant to Section 1B1.11, the applicable guideline range is  
11 the manual in effect at the time of the last offense of  
12 conviction, when that was completed, and the manual in effect  
13 at the time of the sentencing.

14 The case talked and compared this to the three  
04:23:22PM 15 strikes legislation, which obviously enhances penalties for  
16 prior conduct when an individual's been previously convicted  
17 of, for instance, two felonies and ruled that that is not a  
18 constitutional violation.

19 It also has language in there indicating that it's  
04:23:40PM 20 not the amendments to the sentencing guidelines that  
21 disadvantaged the defendant; it's clearly disadvantaged by  
22 increasing the enhanced penalties here.

23 However, it's his election to continue his criminal  
24 activity, and the Court finds that there was sufficient notice  
04:23:57PM 25 in this case to allow for the calculation of guidelines to be

1 determined by the 2013 manual.

2 So that objection is overruled at this time.

3 Now, regarding the sexual contact, do you want to  
4 be heard on that?

04:24:14PM 5 **MR. CICCONE:** Judge, my argument on that is pretty  
6 straightforward. There is contradictory evidence. There's  
7 a statement by so-called Minor Victim No. 1 that was made to  
8 the police down in North Carolina; and there's also the lab  
9 report contradicting her statement or at the very least not  
04:24:33PM 10 confirming it.

11 It's the Government's burden to prove beyond a  
12 preponderance of the evidence any enhancement or any disputed  
13 enhancement under the guidelines, and there has been nothing  
14 presented which would tip the scale one way or the other.

04:24:49PM 15 So based on that, I think the Court has to find  
16 that they have not met their burden as to that enhancement.

17 **THE COURT:** Okay. Regarding this particular issue,  
18 there was a reservation in the plea agreement for the defense  
19 to argue that there was not sexual contact and their different  
04:25:06PM 20 calculations was based upon that. The Government reserved  
21 their right to argue that there was sexual contact.

22 **MR. FIELD:** That's correct.

23 **THE COURT:** Do you want to be heard on that?

24 **MR. FIELD:** I do, Judge, on this point I would like  
04:25:15PM 25 to be heard. And I guess I take a slightly different tact

1 than Mr. Ciccone has in assessing the evidence that the  
2 Government has marshaled in support of its position.

3 First, I would note for the Court that in Counts 2  
4 through 4 he admitted to having had sexual contact with  
04:25:31PM 5 children. And under the Federal Rules of Evidence, that is  
6 admissible for propensity to show similar conduct on future  
7 occasions.

8 So there is no forbidden propensity bar in this  
9 particular circumstance, and we would argue that the Court  
04:25:45PM 10 draw that inference.

11 Second, the defendant stated that he was planning  
12 to have sex with her as he drove from North Carolina to New  
13 York to get her. I think that's a very significant fact as  
14 well. That corroborates the victim's statement that, in  
04:25:59PM 15 fact, they did have sex because the guy drove from  
16 North Carolina to New York for the purpose, his stated purpose  
17 of having sex with her.

18 Finally, I would note that according to the victim,  
19 she had sex on two occasions with the defendant, both times on  
04:26:14PM 20 October 2nd. She wasn't found until October 3rd.

21 And the rape kit test was performed on October 3rd.  
22 For some reason it wasn't evaluated until almost a year later  
23 on August 15th, 2011, and the travel dates were October 3rd,  
24 2001 (sic) or late -- late at night or early in the morning on  
04:26:36PM 25 October 2nd, 2010 is when they left New York, and the evening



1 of October 3rd is when she was found in North Carolina.

2 The victim stated that the defendant had sex with  
3 her en route back from New York to North Carolina. He wore a  
4 condom. She took a shower and discarded the clothes that she  
04:26:54PM 5 was wearing at the time. That would explain, in the  
6 Government's view, the finding of no semen or spermatozoa in  
7 the rape kit.

8 I think that when you consider all the evidence, I  
9 think the defense falsely portrays it as a -- their  
04:27:09PM 10 interpretation of the rape kit versus the defendant's  
11 statement.

12 I think that there's much more than the defendant's  
13 naked statement in support of the Government's position that  
14 there was sexual contact between the defendant and the victim.

04:27:22PM 15 **THE COURT:** Thank you.

16 **MR. CICCONE:** Your Honor, if I could just respond?

17 **THE COURT:** Sure.

18 **MR. CICCONE:** First of all, there has been no  
19 evidence, no expert testimony or anything for you to draw the  
04:27:29PM 20 conclusions that Mr. Field is arguing. We don't know whether  
21 or not a rape kit should show a positive result three days  
22 later vs. 100 days later.

23 I mean, maybe a scientist could tell us that, but  
24 we don't have that. You can't argue propensity and just lack  
04:27:48PM 25 of other evidence because it's the Government's burden to

1 prove that the enhancement was met as to Count 1. I'm not  
2 arguing as to Counts 2, 3 and 4. I mean, that's a separate  
3 argument, which you've already ruled on.

4 But as to Count 1, even if you say that there was a  
04:28:03PM 5 propensity as to crimes committed years earlier, the  
6 Government still has to prove and it has to meet their burden  
7 as to the application of this enhancement as to this count.

8 And we don't have any actual evidence offered other  
9 than some statements that were made, and then we have the lab  
04:28:22PM 10 report which does not confirm and is not consistent with her  
11 statements.

12 **MR. FIELD:** The Government's position is that the  
13 lab report doesn't contradict her statements because it's  
14 insufficient, Your Honor.

04:28:32PM 15 **MR. CICCONE:** But it doesn't support anything,  
16 though.

17 **THE COURT:** Well, that's not unusual.

18 **MR. CICCONE:** It's not, Judge. And if somebody  
19 were to come forward and say here's why the rape kit could be  
04:28:44PM 20 negative for absolutely everything, but it could have still  
21 happened, then that would be one thing. Then you would have a  
22 basis to say okay, this is why I'm going with this evidence  
23 over the other. But it's more than just oh, it didn't show  
24 the evidence. You know, this victim says that they performed  
04:29:00PM 25 sex in multiple different ways and the rape kit is negative

1 for every one of those.

2 **THE COURT:** The way I read it, the rape kit is only  
3 talking about the absence of the presence of semen.

4 **MR. CICCONE:** I think it also said there was the  
04:29:13PM 5 absence of saliva, which she says there was oral sex and  
6 sexual intercourse, and it's negative for both.

7 **THE COURT:** You're correct. It does say negative  
8 for the presence of saliva as well, but neither one of those  
9 would negate an act of either intercourse or the act of oral  
04:29:35PM 10 sex as well.

11 **MR. CICCONE:** I'm sorry?

12 **THE COURT:** Either act, either sexual intercourse or  
13 deviant sexual intercourse.

14 **MR. CICCONE:** Right. I mean, Judge, there's any  
04:29:44PM 15 number of things that could have happened. I mean, all we  
16 know is that the scientific evidence that we have doesn't  
17 confirm anything.

18 **THE COURT:** Anything further on that?

19 **MR. CICCONE:** I mean, no, Judge. I mean, I would  
04:29:57PM 20 just remind the Court that it's not my burden to disprove  
21 anything. It's the Government's burden and they haven't met  
22 it.

23 **THE COURT:** Well, they have to prove by a  
24 preponderance of the evidence.

04:30:06PM 25 **MR. CICCONE:** Agreed.

1                   **THE COURT:** Correct?

2                   **MR. CICCONE:** Yes.

3                   **THE COURT:** The issue regarding sexual contact, the  
4 Government does have the burden to prove that there was sexual  
04:30:13PM 5 contact with the victims by a preponderance of the evidence.

6                   In this case there is attached statements by the  
7 victim regarding having sexual contact with the defendant both  
8 on the way between Canandaigua and North Carolina; and also  
9 then, once again, in North Carolina.

04:30:35PM 10                   The statement was immediately provided to police in  
11 North Carolina upon the arrest of Mr. Schliebener.

12                   In addition to that, there were text messages from  
13 Mr. Schliebener that were very telling, indicating that he was  
14 on his way from North Carolina, that it would take some 12  
04:30:59PM 15 hours to arrive at that location, indicated that he talked  
16 about getting bored regarding such a long drive.

17                   And he responded: And if you get bored undress.

18                   She wrote: LOL okay.

19                   He then wrote: We might have sex a few times  
04:31:19PM 20 before I get home.

21                   Victim wrote: Okay LOL.

22                   The defendant wrote: But remember to pack your  
23 camera and everything about me.

24                   Victim wrote: Okay.

04:31:33PM 25                   Victim at a later time wrote: I'm packing.

1                   And he wrote: Oh, you know this is the last time  
2 you pack there.

3                   Victim: LOL. Do you have condoms with you LOL.

4                   The defendant: Yes, I do.

04:31:51PM 5                   Victim: LOL okay.

6                   And the defendant: You think of the condoms.

7                   In addition to that, the Court can look at the  
8 conduct regarding the other individuals in Counts 2, 3 and 4  
9 involving photographs and production of video depictions of  
04:32:12PM 10 him having sexual intercourse with his 13-year-old daughter  
11 regarding one count.

12                   Regarding the second act of sexual contact with his  
13 4-to-6-year-old grandniece, and which I believe he had contact  
14 with her vaginal area with his penis.

04:32:34PM 15                   And then sexual contact with a 3-to-5-year-old  
16 child that his wife was baby-sitting that included digital  
17 penetration by the defendant.

18                   In addition to that, the victim upon arriving back  
19 to this area was interviewed and made contact with the Bivona  
04:32:53PM 20 Advocacy Center and did make statements to that -- to those  
21 individuals as well.

22                   The lab report that was provided did indicate the  
23 absence of semen and the absence of saliva. The Court does  
24 not find that dispositive for the fact of whether or not there  
04:33:14PM 25 was sexual contact between the defendant and the victim

1 relating to Count 1.

2 The Court finds based upon all that that there is  
3 sufficient evidence by a preponderance of the evidence to show  
4 there was sexual contact between the victim relating to  
04:33:29PM 5 Count 1 and the defendant.

6 So that objection is also overruled.

7 I don't think there are any other objections; is  
8 that right?

9 **MR. CICCONE:** No, Judge.

04:33:44PM 10 **THE COURT:** Okay. Mr. Field, do you want to be  
11 heard?

12 **MR. FIELD:** Not -- just briefly, Your Honor. You  
13 know, the Government's going to advocate for the maximum  
14 possible sentence pursuant to the plea agreement of 210

04:33:59PM 15 months. That's appropriate in this case. The defendant is  
16 dangerous. He's a sexual predator. He's repeatedly shown  
17 his inclination and willingness to engage in those acts.

18 I think he's got to be locked up for a long time,  
19 Judge, and then he's got to be placed on supervised release  
04:34:13PM 20 for the rest of his life to protect society, protect other  
21 children out there.

22 **THE COURT:** Thank you. Mr. Ciccone?

23 **MR. CICCONE:** Judge, I will rely on what's already  
24 in my written submissions and attached a letter from  
04:34:29PM 25 Mr. Schliebener. Without, I guess, waiving my objections,

1 which I know you've already ruled on, but the guidelines under  
2 your calculation would then be -- I think 168 to 210 would be  
3 what's in the plea agreement.

4 So I would ask that you impose a sentence of 168.

04:34:50PM 5 **THE COURT:** Well, the Court's not bound by the plea  
6 agreement.

7 **MR. CICCONE:** I know that, I understand, but I'm  
8 saying based on what the plea agreement was and your ruling on  
9 the objection I was allowed to make under the plea agreement,  
04:35:02PM 10 those would be the numbers.

11 **THE COURT:** And certainly your objections are noted  
12 and preserved for the record.

13 **MR. CICCONE:** Thank you, Judge.

14 **THE COURT:** Anything else?

04:35:12PM 15 **MR. CICCONE:** No, Judge. Thank you.

16 **THE COURT:** Mr. Schliebener, do you want to say  
17 anything?

18 **THE DEFENDANT:** No.

19 **THE COURT:** You don't want to say anything at all?

04:35:24PM 20 **THE DEFENDANT:** I don't know what to say, sir.

21 **THE COURT:** Okay. I do have the letter that you  
22 sent to the Court. As I indicated, your attorney did file a  
23 variety of objections and a statement on your behalf and he  
24 included in that the letter that you sent to the Court as  
04:35:42PM 25 well.

1 First of all, regarding the calculation of the  
2 guidelines, the Court finds that regarding Count 1, that the  
3 base offense level is 28.

4 That there should be a two level increase for undue  
04:36:01PM 5 influence of a minor.

6 A two level increase for the use of a computer.

7 And the two level increase for the commission of a  
8 sex act, which is we just discussed. Obviously, your attorney  
9 had challenged that particular calculation by the Court,  
04:36:21PM 10 resulting in a total offense level of 34 for Count 1.

11 For Count 2 a base offense level of 32, a two level  
12 enhancement for the age of the victim being between the ages  
13 of 12 and 16. In this case it involved a depiction of  
14 photographs of the defendant having sexual intercourse with  
04:36:49PM 15 his 13-year-old daughter.

16 A two level increase for the victim being a  
17 relative to the defendant.

18 And a two level increase based upon sexual contact,  
19 for a resulting offense level of 38 for Count 2.

04:37:09PM 20 For Count 3 the base level being 32.

21 A four level increase based upon the victim being  
22 between the ages of 4 and 6 years old. This involved sexual  
23 contact with the grandniece. It involved the defendant  
24 having contact between his penis and the vaginal area of that  
04:37:30PM 25 grandniece, and also having her hold his penis in her hand



1 near her mouth.

2 It would be a two level increase for victim being a  
3 relative to the defendant.

4 And a two level increase based upon sexual contact  
04:37:49PM 5 for a total offense level of 40 regarding that particular  
6 count.

7 Regarding Count 4, base offense level of 32.

8 With a four level increase based upon in that count  
9 involving the depiction of a child between the ages of 3 and 5  
04:38:10PM 10 years old. This involved a child who was being babysat by  
11 his wife with the depiction being the defendant digitally  
12 penetrating the child in that particular depiction.

13 A two level increase based upon a minor being in  
14 the custody or care or control of the defendant as stated. At  
04:38:34PM 15 that time the defendant's wife was baby-sitting that  
16 particular child.

17 And also a two level increase based upon sexual  
18 contact, for a level of 40 relating to Count 4.

19 Based upon Count 1 being a level 34, Count 2 a  
04:38:56PM 20 level 38, Count 3 being a level 40 and Count 4 being a level  
21 40, there's a four level increase based upon the fact there  
22 are 3.5 units for a multi-count adjustment, resulting in a  
23 total offense level of 44.

24 The defendant does receive a three level downward  
04:39:18PM 25 adjustment for acceptance of responsibility, ultimately

1 resulting in a total offense level of 41 in this case.

2           Regarding that -- so many notes in this matter.  
3 The defendant's criminal history category is a level I since  
4 he has no prior criminal history.

04:39:47PM 5           The guideline range, his sentence would be 324  
6 months to 405 months, with a 15 year period of supervised  
7 release under the guidelines, the fine range would be between  
8 \$25,000 and \$250,000, and a \$100 special assessment on each  
9 count for a total of \$400.

04:40:16PM 10           Now, Mr. Schliebener, the Court has to decide what  
11 to sentence you to. That's the guideline range in this case  
12 is 424 (sic) months to 405 months under the -- under the  
13 determination of the Court and the guidelines.

14           **MR. CICCONE:** 324, Judge.

04:40:34PM 15           **THE COURT:** What did I say?

16           **MR. CICCONE:** I think you said 424.

17           **THE COURT:** 324 to 405. I had to look at a number  
18 of different factors here. This is a very disturbing case.  
19 This is a matter where you've been engaging in this type of  
04:40:48PM 20 conduct for a long period of time, over a decade, resulting in  
21 your having such incredible sexual urges that you drove 12  
22 hours to drive from North Carolina to Canandaigua to pick up  
23 this young girl, 14-year-old, to take her back to  
24 North Carolina; and as the Court found, engaged in sexual  
04:41:14PM 25 contact with her on at least two separate occasions.

1           In addition, over that 10 year period of time you  
2 were involved with the production of images of contact with  
3 children that included acts of bondage, torture, humiliation,  
4 bestiality, including sexual contact with your  
04:41:42PM 5 13-year-old daughter, including sexual intercourse and  
6 fellatio with your 13-year-old daughter.

7           Images of contact with a grandniece who was aged  
8 between 4 and 6 years old that involved contact with your  
9 penis and her vaginal area.

04:41:59PM 10           And also images of her holding your penis near her  
11 mouth; images of sexual contact with a 3-to-5-year-old child  
12 that was entrusted to the care of your wife who was  
13 baby-sitting that child, and images of you digitally  
14 penetrating that young child.

04:42:22PM 15           All just -- there's really no words to describe it  
16 except despicable acts and conduct over a long period of time.  
17 It just appears that you are absolutely unable to control your  
18 conduct.

19           The fact that you would drive 12 hours to pick up a  
04:42:39PM 20 stranger, 14-year-old, several states away to engage her in  
21 sexual contact shows that you're a very, very dangerous  
22 person.

23           The reason I asked you about your statement is your  
24 statement indicates you're totally clueless. There's nothing  
04:42:58PM 25 in here -- you say "what I've done is wrong," but it doesn't

1 really have any ring of truth to it whatsoever.

2           You ask to be released, indicating you're a  
3 workaholic. That you should receive and asked for a  
4 probation sentence.

04:43:18PM 5           That you would be willing to wear an electronic  
6 tracker so that you could go back to living, working as in  
7 logging and lawn care because you enjoy being outdoors.

8           I don't know if you just don't get it or just don't  
9 want to get it, but I think you knew that the minimum sentence  
04:43:39PM 10 in this case was at least 10 years, so how you could even  
11 stand there and ask for a probation sentence or your release  
12 is beyond me.

13           Now, I always try to look at the positive side of  
14 individuals, too. You have a GED. You did plead guilty and  
04:43:54PM 15 admit your involvement in these acts. You were employed in a  
16 good paying job, I think you were paid something like \$76,000  
17 a year. You also worked with a fire department and also the  
18 Boy Scouts at some point.

19           So almost two different people standing before me,  
04:44:13PM 20 but when I look at the negatives vs. the positives here, you  
21 scare me. You're really a dangerous person. I don't know  
22 how your mind operates, quite frankly, because you could leave  
23 all these victims in your wake, which you've done, children,  
24 daughters, strangers, nieces, children that were babysat for.  
04:44:39PM 25 It's a mind that I think people really can't get their arms

1 around to understand how this could possibly exist, but it  
2 does exist. We know that.

3 So the Court has to impose a sentence that makes  
4 sense here. It considers the nature and circumstance of the  
04:44:57PM 5 offense, and obviously in this case extremely dangerous  
6 conduct, very perverted conduct, disgusting, despicable  
7 conduct.

8 Both the acts with these individuals as well as the  
9 production of these images that were available I guess for  
04:45:21PM 10 others to view as well. The Court has to look at the fact  
11 that these young children are victims that you've left in your  
12 wake, and they were young -- 3 to 5, 4 to 6, 13 and 14 years  
13 of age -- that will forever be tainted and tarnished by what  
14 you've done to them.

04:45:45PM 15 The Court has to reflect in its sentence the  
16 seriousness of the offense and could only impose a severe  
17 sentence to indicate that both you present a danger and that  
18 this type of conduct, once discovered, is something that  
19 cannot be thought to be acceptable, so that a message is sent  
04:46:06PM 20 to the community and to others that this is conduct that must  
21 be punished severely.

22 The sentence must be sufficient, but not more than  
23 necessary. You're 52 years of age. I guess I could give  
24 you 100 years imprisonment, but I'm not sure that would make  
04:46:29PM 25 much sense. We would be paying for your care when you're 90

1 years old.

2 But I do feel that it's sufficient to keep you in  
3 jail for as long as possible so that hopefully when you get  
4 out, you're unable to perform sexual acts and your sexual  
04:46:45PM 5 urges hopefully will be severely diminished by the time you  
6 ever get out of jail.

7 Certainly a jail sentence sufficient to deter you  
8 from any further contact; to protect victims, whether they be  
9 in this community or in any community from your additional  
04:47:05PM 10 contact and conduct that you performed over at least a decade  
11 that we're aware of here.

12 Hopefully, you'll get some treatment while you're  
13 in prison, sex offender counseling and mental health treatment  
14 because I think you need it to figure out what's wrong that  
04:47:27PM 15 got you to this point and led you to live the type of life  
16 that you lived over this 10 year period that we're aware of.

17 Based upon all that, it's the sentence of the Court  
18 that regarding Counts 1 through 4, it's the sentence of the  
19 Court that the defendant William Schliebener be sentenced to  
04:47:47PM 20 300 months incarceration; each count to run concurrent.

21 That you be sentenced to a period of supervised  
22 release of 15 years; also on each count to run concurrent.

23 There will be a \$100 special assessment for a total  
24 of \$400.

04:48:06PM 25 And there are several conditions of supervised

1 release, including obviously not engaging in any further  
2 criminal activity.

3 Undergo any drug and alcohol evaluation testing and  
4 treatment.

04:48:19PM 5 Submitting to a DNA sample.

6 Registering as a sex offender wherever you may  
7 work, live, or be contacted with.

8 That you submit to any search conditions as well of  
9 your residence or property.

04:48:36PM 10 I'm not going to impose any fine. I don't think  
11 that makes any sense whatsoever.

12 There's also a forfeiture of the computer that was  
13 seized in North Carolina, and there's been no request for any  
14 restitution, so the Court is not going to impose any  
15 restitution conditions as well.

04:48:53PM

16 Anything else from Probation?

17 **MR. SPOGEN:** Yes, Your Honor. The standard  
18 computer restrictions and monitoring software.

19 **THE COURT:** Obviously, Mr. Schliebener, if you're  
20 released on supervised release you cannot utilize any

04:49:04PM

21 computers without the permission of the Probation Department,  
22 and they must have access to your computers to assure that  
23 you're not utilizing those for any purpose of access to any  
24 type of pornography, child pornography or any other type of  
25 improper materials.

04:49:25PM

1 Anything else?

2 **MR. SPOGEN:** Yes, Your Honor. There's a few more.

3 The mental health treatment designed for sex offenders.

4 **THE COURT:** Yes. Again, if you're released to

04:49:36PM 5 supervised release you shall participate in sex offender

6 treatment and any mental health treatment that would be

7 appropriate for that conduct.

8 You're to have no contact with any child under the

9 age of 18 unless approved by the Probation Department.

04:49:52PM 10 Not to loiter within 100 feet of any school yards,

11 playgrounds, arcades or places primarily used by children

12 under the age of 18.

13 And as I stated, you're prohibited from possessing

14 or downloading any child pornography, any visual depiction

04:50:08PM 15 including photograph, film, video, picture, computer or

16 computer-generated images of pictures.

17 You shall register with the state sex offender

18 registration agency wherever you may be employed or reside.

19 And submit to a search of your person, property,

04:50:28PM 20 house, residence, vehicle or papers, obviously with reasonable

21 suspicion concerning a violation of any of the conditions of

22 supervised release.

23 Probation will also monitor your compliance with

24 not buying or subscribing to networks that provide any child

04:50:52PM 25 pornography.



1 Anything else?

2 **MR. SPOGEN:** No, Your Honor. Thank you.

3 **THE COURT:** Okay. Mr. Schliebener, I am advising  
4 you of your right to appeal this sentence. Your attorney  
04:51:01PM 5 raised a number of issues that could be issues for appeal  
6 regarding the calculation of the guidelines as the Court  
7 determined them to be, particularly the sexual contact issue  
8 and the utilization of the 2013 guidelines manual. So you  
9 reserve your right to appeal those particular issues.

04:51:22PM 10 I believe the plea agreement left open the  
11 sentencing from the minimum sentence to the maximum sentence,  
12 and I believe you waived any right to appeal the sentence as  
13 long as it complies with the plea agreement.

14 Anything else?

04:51:38PM 15 **MR. FIELD:** The Government would move to dismiss the  
16 indictment in the case, Your Honor.

17 **THE COURT:** Mr. Ciccone?

18 **MR. CICCONE:** I have no objection to that.

19 **THE COURT:** Okay. Anything, Mr. Schliebener?

04:51:46PM 20 Anything further?

21 **THE DEFENDANT:** Just this last few minutes and  
22 Mr. Ciccone --

23 **THE COURT:** I'm sorry, what's that?

24 **THE DEFENDANT:** My lawyer can explain to me this  
04:51:57PM 25 last stuff that was going on. What the probation officer

1 mentioned. I understand that because we went over that  
2 before, but then after that it got kind of a little wavy.

3 **THE COURT:** Mr. Field was indicating that there  
4 would be a dismissal of the open counts of the indictment, and  
04:52:13PM 5 that motion is granted.

6 All right, thank you.

7 (**WHEREUPON**, the proceedings adjourned at 4:52 p.m.)

8 \* \* \*

9 **CERTIFICATE OF REPORTER**

10  
11 In accordance with 28, U.S.C., 753(b), I certify that  
12 these original notes are a true and correct record of  
13 proceedings in the United States District Court for the  
14 Western District of New York before the Honorable Frank P.  
15 Geraci, Jr. on November 18th, 2014.

16  
17 S/ Christi A. Macri

18 Christi A. Macri, FAPR-RMR-CRR-CRI  
19 Official Court Reporter  
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